

The pursuit of terrorists post September 11, 2001 – ‘Be afraid, be very afraid...’

Countering the real risk of bombings by people who hold extreme views is an important but not a new task for governments throughout the world. The need for effective laws to pursue terrorists cannot be denied, however this must be balanced with individual rights and fundamental principles of justice to ensure that Australia remains a civilised, principled society. It cannot be responsibly suggested that the Australian government was wrong in taking steps to better protect citizens since September 11, 2001. However, the government’s recent treatment of Mohammad Haneef has exposed just how brutal the exercise of executive power against an individual can be in this political climate – and there is little to indicate that the broader community is any safer because of these measures.

The link between 'terrorism' and our migration laws is complex and one that is easily manipulated in tabloid politics. No-one could complain if Haneef was deported after a proper application of the “character test”. However, Minister Andrews’ decision to revoke Haneef’s visa is unashamedly intended to usurp the criminal process by moving the power to detain him, before he is convicted, from the court system to the executive government. This has the practical effect of greatly diminishing the power to review the government’s actions and removing obligations of disclosure. The propriety of this move has been intensely questioned, and the paucity of the evidence placed before the court in the bail proceedings has rightly prompted calls for release of any further information the government says it has. Instead, the government has focused upon attacking the operation of the laws they themselves put in place. Because the independent court’s assessment of the evidence does not reflect the government’s wishes, the Attorney-General has foreshadowed reviewing the laws to make them even more Draconian. Several ministers have also made personal attacks upon Haneef’s lawyers, a disgraceful and transparently cynical use of Orwellian “Newspeak” that Philip Ruddock perfected when he held his last portfolio.

A far more responsible approach is necessary. There is a need to make a sober assessment of this legislative framework on important principles of criminal justice. Also, a sophisticated independent identification is needed of the actual risks and whether any improvements to security have been achieved by these measures.

The processes involved in the ‘ordinary’ or non-terrorism related criminal justice system are understandably complex. There is instilled in this system a number of principles which are intended to strike a reasonable balance between the due prosecution of offenders and the protection of our individual rights. Views may reasonably differ on some of these principles but they have been in place for centuries and include the presumption of innocence and placing the burden of proof on the prosecution, as well as setting the standard at proof beyond reasonable doubt before a person can be found guilty, incarcerated or otherwise punished.

Also, other than for offences that impose mandatory life imprisonment, such as murder, it is assumed that as long as risks are appropriately addressed, an accused person is entitled to be free until such time as an independent judicial process determines guilt. These are important protections which set us apart from the arbitrary detention and political abuse of power that existed for example under

Saddam Hussein and still exists in places such as Burma and Zimbabwe. We rightly cite this balance as being an indication of Australia's maturity as a democracy and our sophistication in governance.

However, the 2004 laws under which Dr Haneef has been detained bear almost no relation to these principles, and indeed intentionally demolishes many of them.

Firstly, the Act permitted the government to detain the doctor in a police cell for two weeks without any charge. This is despite his having co-operatively answered hundreds of questions from the AFP on the very first day. Secondly, after this interrogation the government was allowed to withhold from Dr Haneef and his lawyers critical evidence relied upon by the government's lawyers in charging him and seeking his detention prior to any trial. The court can be shown this material and is required to act upon it without ever receiving any argument against that evidence by Dr Haneef. Thirdly, the presumption of innocence is significantly diminished by requiring Dr Haneef to demonstrate "exceptional circumstances" in order to be released on bail. Fourthly, after having managed to do that before an independent court he remains in custody because a government minister has determined that Haneef has failed a 'character test' within our migration laws. Dr Haneef has to now seek a Federal Court review of the Minister's decision before he has any prospect of being released.

Other commentators and indeed Dr Haneef's lawyers have amply demonstrated specific limitations in the government's case. However, let us assume that the government's conduct is 'lawful' in the sense that this is what they intended the legislation to permit. What does it say about our respect for universal rights? And perhaps more importantly, how much safer are our children from the real acts of terror?

There is every likelihood that real terrorists will be caught by the government's framework and they are unlikely to be released before trial. But it will also catch many other people who are clearly not terrorists nor in any way supportive of terrorism. It will catch young men like Haneef, who obtained qualifications as a doctor and gained legitimate entry into Australia to work in our understaffed health system. A year earlier he had been so 'reckless' as to give his cousin his SIM card without knowing his cousin's future purposes. He would later be accused of a connection with an act of terrorism on the other side of the world. Haneef's cousin has been investigated by the British authorities, and reportedly cleared of any association with any terrorist organisation. Contrary to what was submitted by the DPP, recent reports suggest that the SIM card was not in fact found in the car used in the attempted bomb attack. How these and other misstatements have been made warrant an independent inquiry and make the criminal allegations against Haneef a complete farce.

It is politically important to be seen to be tough on 'terrorism'. The Federal Opposition is standing 'shoulder to shoulder' with the government on this issue in an election year. Any criticism however reasoned, will be seen as a sign of weakness and may reflect badly at the voting booth. But what is at stake is much more than the makeup of the next Australian parliament. What is at stake is our collective sense of what is right and wrong in the treatment of individuals in this country, both citizens

and non-citizens, in the professed pursuit of our collective safety and protection from political terrorism; in essence our collective line in the sand. The suspicion amongst some members of the Muslim community that these laws can be used discriminately cannot be said to unreasonable.

The application of these laws in the fashion exercised against Haneef do not make many of us feel safer and there is no real likelihood that we are in fact any safer. Yet these laws abridge the rights of all of us by demonising an individual by mere allegation. These laws do not protect Australians. They will not increase the possibilities of catching terrorists and their associates. Yet they diminish and shame us and lay bare our pretensions of sophistication and maturity and a nation that heralds “the fair go”. The brutal demonstration of executive power against this young doctor signals a cold warning about how dangerous unchecked political power can become. Big Brother is not just a boring reality TV show. Even Orwell would be grimacing. Be afraid, be very afraid...

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